

1960

c 344 Real Estate and Business Brokers Act

Ontario

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CHAPTER 344

The Real Estate and Business Brokers Act

1. In this Act,

Interpre-
tation

- (a) "broker" means a person who, for another or others, for compensation, gain or reward or hope or promise thereof, either alone or through one or more officials or salesmen, trades in real estate, or a person who holds himself out as such;
- (b) "business" means an undertaking carried on for the purpose of gain or profit, and includes an interest in any such undertaking, and, without limiting the generality of the foregoing, includes a boarding house, hotel, store, tourist camp and tourist home;
- (c) "official" means the president, vice-president, secretary, treasurer, secretary-treasurer or general manager of a partnership or company, or the manager of the real estate department of a trust company;
- (d) "prescribed" means prescribed by this Act or the regulations;
- (e) "real estate" includes real property, leasehold and business whether with or without premises, fixtures, stock-in-trade, goods or chattels in connection with the operation of the business;
- (f) "register" means the register under this Act;
- (g) "Registrar" means the Registrar of Real Estate and Business Brokers;
- (h) "regulations" means the regulations made under this Act;
- (i) "salesman" means a person employed, appointed or authorized by a broker to trade in real estate;
- (j) "Superintendent" means the Superintendent of Insurance;
- (k) "trade" includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition or transaction, and any

act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt, and the verb "trade" has a corresponding meaning. R.S.O. 1950, c. 332, s. 1; 1957, c. 106, s. 1.

REGISTRAR

Registrar **2.—**(1) There shall be a Registrar of Real Estate and Business Brokers who shall be appointed by the Lieutenant Governor in Council.

Power and duties (2) The Registrar may exercise the powers and shall discharge the duties conferred and imposed upon him by this Act and the regulations under the supervision of the Superintendent. R.S.O. 1950, c. 332, s. 2.

REGISTRATION

Registration of brokers, salesmen, officials

3.—(1) No person shall,

- (a) trade in real estate as a broker unless he is registered as a broker;
- (b) trade in real estate as a salesman unless he is registered as a salesman of a registered broker;
- (c) act as an official of or on behalf of a partnership or company in connection with a trade in real estate by the partnership or company unless he and the partnership or company are registered as brokers. R.S.O. 1950, c. 332, s. 3 (1); 1954, c. 82, s. 1 (1); 1957, c. 106, s. 2.

Change in partnership

(2) Subject to section 42, any change in the membership of a partnership shall be deemed to create a new partnership and to extinguish any existing registration. R.S.O. 1950, c. 332, s. 3 (2); 1954, c. 82, s. 1 (2).

Change in company's officers

(3) A change in the officers of a registered limited company may be made only with the consent of the Registrar. 1954, c. 82, s. 1 (3).

Salesman, registration

4.—(1) A salesman may only be registered where he is the salesman of a registered broker. R.S.O. 1950, c. 332, s. 4 (1).

Suspension of registration

(2) The termination of the employment of a salesman with a registered broker operates as a suspension of the registration of the salesman until notice in writing has been received by the Registrar from another registered broker of his intention to employ the salesman and until the salesman is again registered as a salesman. 1954, c. 82, s. 2.

5. The Registrar may grant or refuse to grant temporary registration or temporary renewal of registration to an applicant therefor and shall forthwith report to the Superintendent the action taken by him upon any such application. R.S.O. 1950, c. 332, s. 5.

Temporary
registration

6. The Superintendent shall grant registration or renewal of registration to an applicant where in his opinion the applicant is suitable for registration and the proposed registration is not objectionable. R.S.O. 1950, c. 332, s. 6.

Registration

7. The Superintendent shall suspend or cancel a registration where in his opinion such action is in the public interest. R.S.O. 1950, c. 332, s. 7.

Suspension,
cancellation

8.—(1) In determining the granting or refusal of an application for registration or renewal of a registration or the suspension or cancellation of a registration, the Superintendent may, and shall when so requested in writing by the applicant or person registered, appoint an advisory board consisting of three members of whom two shall be registered brokers and the third shall be chairman, which shall hold a hearing and make a report to the Superintendent with such recommendation as it deems fit.

Advisory
board
to hold
hearing
and report

(2) For the purpose of the hearing, the chairman of the advisory board has and may exercise all of the powers that may be conferred on a commissioner under *The Public Inquiries Act*. 1958, c. 93, s. 1.

Powers of
chairman
R.S.O. 1960,
c. 323

9. Notwithstanding any order of the Superintendent, a further application may be made upon new or other material or where it is clear that material circumstances have changed. R.S.O. 1950, c. 332, s. 8.

Further
applications

10.—(1) Every application shall be made in writing upon the prescribed form provided by the Superintendent and shall be accompanied by the prescribed fee and a bond in such amount and form, subject to section 19, as is prescribed.

Application
to be upon
forms with
proper fees
and bonds

(2) The bond shall be,

Type of
bond

(a) the bond of a guarantee company approved under *The Guarantee Companies Securities Act*;

R.S.O. 1960,
c. 168

(b) a personal bond accompanied by collateral security; or

(c) the bond of a guarantor, other than a guarantee company, accompanied by collateral security.

Collateral
security

(3) The collateral security shall be negotiable securities of the classes prescribed by the regulations not less in value than the sum secured by the bond, and shall be deposited with the Treasurer of Ontario. R.S.O. 1950, c. 332, s. 9.

Address for
service

11. Every applicant shall state in the application an address for service in Ontario and all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. R.S.O. 1950, c. 332, s. 10.

Further
information

12. The Registrar may, and shall when so directed by the Superintendent, require further information or material to be submitted by any applicant or any registered person within a specified time limit and may require verification by affidavit or otherwise of any information or material then or previously submitted. R.S.O. 1950, c. 332, s. 11.

Residence

13. Registration, in the absolute discretion of the Superintendent, may be refused to a person either as a broker or salesman who has not been a resident of Ontario for at least one year immediately prior to the date of application with the intention of making his permanent home in Ontario unless at the time of the application the person is registered either as a broker or salesman under the laws relating to real estate and business brokers and salesmen of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of such application and is otherwise suitable for registration. R.S.O. 1950, c. 332, s. 12 (1).

Temporary
registration
on death
of broker

14.—(1) Where a registered broker who carries on business as an individual broker dies, the Registrar may,

- (a) grant to the executor or administrator of such broker temporary registration as a broker for a period of not more than six months in respect of the business of the deceased broker; and
- (b) exempt any such executor or administrator from passing a written examination.

Salesmen
of deceased
broker

(2) All salesmen registered as salesmen of the deceased broker at the time of his death shall be deemed to be registered as salesmen of such executor or administrator. R.S.O. 1950, c. 332, s. 13.

Termination
and renewal
of registra-
tion

15. Every registration and renewal of registration lapses on the 30th day of April in each year and every registered broker shall apply on the prescribed form for renewal of his

own registration and the registration of his currently registered salesmen on or before the 20th day of April giving full particulars of any change in the facts set forth in the latest application form on record and enclosing the prescribed fees for the broker and his salesmen as upon a first application. 1957, c. 106, s. 3.

16.—(1) Every registered broker shall immediately notify the Registrar in writing of, Change in registration of broker

- (a) any change in the address for service;
- (b) any change in the partners in the case of a partnership; and
- (c) the commencement and termination of employment of every salesman.

(2) Every registered salesman shall immediately notify the Registrar in writing of, Salesman

- (a) any change in his address for service; and
- (b) every commencement and termination of his employment by a registered broker. R.S.O. 1950, c. 332, s. 15; 1954, c. 82, s. 3.

17.—(1) The Registrar shall cause all cash, cheques and money orders to be deposited daily with the Treasurer of Ontario for payment into the Consolidated Revenue Fund. Registrar to make daily deposit

(2) Where an application for registration is refused, or is granted after the 30th day of September, or a registration is cancelled, the Superintendent may recommend to the Treasurer of Ontario that a refund of the fee or of such part thereof as he deems fair and reasonable be made and the Treasurer may make such refund. R.S.O. 1950, c. 332, s. 16. Refund

EXEMPTIONS

18. Registration shall not be required in respect of any trade in real estate by, Exemptions

- (a) an assignee, custodian, liquidator, receiver, trustee or other person acting under the *Bankruptcy Act* (Canada), *The Corporations Act*, *The Judicature Act*, the *Winding-up Act* (Canada), or to a person acting under the order of any court, or an executor or trustee selling under the terms of a will, marriage settlement or deed of trust; R.S.C. 1952, c. 14
R.S.C. 1960, cc. 71, 197
R.S.C. 1952, c. 296
- (b) an auctioneer where the trade is made in the course of and as part of his duties as auctioneer;

R.S.O. 1960,
c. 363

(c) a person who is registered under *The Securities Act*, where the trade is made in the course of and as part of his business in connection with a trade in securities;

(d) a bank or a loan, trust or insurance company trading in real estate owned or administered by the company;

R.S.O. 1960,
c. 241

(e) a person in respect of any mine or mining property within the meaning of *The Mining Act* or in respect of the real estate included in a Crown grant or lease of a mining claim or mineral lands under *The Mining Act* or any predecessor thereof;

(f) a full-time salaried employee of a party to a trade where the employee is acting for or on behalf of his employer;

(g) a person who is practising as a solicitor of the Supreme Court where the trade is made in the course of and as a part of the solicitor's practice;

(h) a person, on his own account, in respect of his real estate, where such trade did not result from,

(i) an offer of such person to act, in connection with such trade or any other trade, for or on behalf of the other party or one of the other parties to the trade, or

(ii) a request that such person act, in connection with such trade or any other trade, for or on behalf of the other party or one of the other parties to the trade,

and the interest of such person in the real estate was acquired prior to such offer or request; or

(i) a person specifically exempted by the regulations in respect of any class of trades in real estate. R.S.O. 1950, c. 332, s. 17, *amended*.

FORFEITURE OF BOND

Forfeiture
of bond

19.—(1) Any bond mentioned in section 10 is forfeit and the amount thereof becomes due and owing by the person bound thereby as a debt due the Crown in right of Ontario,

(a) where a broker, including any member of a partnership or salesman, in respect of whose conduct the bond has been conditioned has been convicted of,

(i) an offence under this Act, or

- (ii) an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the *Criminal Code* (Canada); ^{1953-54, c. 51 (Can.)}
- (b) where judgment based on a finding of fraud has been given against the broker, including any member of a partnership, or salesman in respect of whose conduct the bond is conditioned; or
- (c) where proceedings by or in respect of a broker, including any member of a partnership, or salesman, in respect of whose conduct the bond is conditioned, have been taken under the *Bankruptcy Act* (Canada) ^{R.S.C. 1952, c. 14} or by way of winding up and a receiving order under the *Bankruptcy Act* (Canada) or a winding-up order has been made,

and such conviction, judgment or order has become final by reason of lapse of time or of having been confirmed by the highest court to which an appeal may be taken.

(2) A bond may be cancelled by any person bound there- ^{Cancellation of bond} under by giving to the Registrar at least two months notice in writing of intention to cancel and it shall be deemed to be cancelled on the date stated in the notice, which date shall be not less than two months after the receipt of the notice by the Registrar.

(3) For the purposes of every act and omission occurring ^{Term of bond} during the period of registration or the period prior to cancellation under subsection 2, every bond shall continue in force and the collateral security, if any, shall remain on deposit for a period of two years after the lapse or cancellation of the registration to which it relates, or the cancellation of the bond, whichever occurs first. R.S.O. 1950, c. 332, s. 18.

20. Where a bond secured by the deposit of collateral ^{Sale of collateral security} security with the Treasurer of Ontario is forfeited under section 19, the Lieutenant Governor in Council may direct the Treasurer to sell the collateral security at the current market price. R.S.O. 1950, c. 332, s. 19.

21. Where Her Majesty becomes a creditor of a person ^{Proceedings to enforce forfeiture} in respect of a debt to the Crown arising from the provisions of section 19, the Superintendent may take such proceedings as he sees fit under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act* or the *Winding-up Act* (Canada) ^{R.S.C. 1952, c. 14} for the appointment of an interim receiver, custodian, trustee, receiver or liquidator, as the case may be. ^{R.S.O. 1960, c. 197, 71} R.S.O. 1950, ^{R.S.C. 1952, c. 296} c. 332, s. 20, *amended*.

Assignment
of bond or
payment of
moneys to
creditors

22. The Lieutenant Governor in Council may direct the Treasurer of Ontario,

- (a) to assign any bond forfeited under section 19 and transfer the collateral security, if any;
- (b) to pay over any moneys recovered under such bond; or
- (c) to pay over any moneys realized from the sale of the collateral security under section 20,

to any person, or to the Accountant of the Supreme Court in trust for such persons as may become, in respect of claims arising out of trades in real estate, judgment creditors of the person bonded or who deposited the securities, as the case may be, or to any trustee, custodian, interim receiver, receiver or liquidator of such person, as the case may be. R.S.O. 1950, c. 332, s. 21; 1952, c. 90, s. 1.

Where no
claims
against
proceeds of
bond

23. Where a bond has been forfeited under section 19 by reason of a conviction or judgment under clause *a* or *b* of subsection 1 thereof and the Superintendent has not, within two years of such conviction or judgment becoming final, or of the broker or salesman in respect of whom the bond was furnished ceasing to carry on business as such, whichever occurs first, received notice in writing of any claim against the proceeds of the bond or of such portion thereof as remains in the possession of the Treasurer of Ontario, the Lieutenant Governor in Council may direct the Treasurer to pay such proceeds or portion thereof to the broker or salesman or to any person who upon forfeiture of the bond made any payments thereunder, after first deducting the amount of any expenses that have been incurred in connection with any investigation or otherwise relating to such broker or salesman. R.S.O. 1950, c. 332, s. 22.

INVESTIGATION AND ACTION BY SUPERINTENDENT

Order to
investigate

24.—(1) Where upon a statement made under oath it appears probable to the Superintendent that a person has,

- (a) contravened any of the provisions of this Act or the regulations; or
- (b) committed an offence under the *Criminal Code* (Canada) in connection with a trade in real estate,

1953-54,
c. 51 (Can.)

the Superintendent may appoint the Registrar or any other person to make such investigation as he deems expedient for the due administration of this Act and any such order shall determine and prescribe the scope of the investigation.

(2) For the purposes of any such investigation, the person appointed to make the investigation may investigate, inquire into and examine the affairs of the person in respect of whom the investigation is being made and into any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with such person and into any property, assets or things owned, acquired or alienated in whole or in part by such person or by any person acting on behalf of or as agent for such person. Scope of investigation

(3) For the purposes of any such investigation, the person making the investigation has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things as is vested in the Supreme Court or a judge thereof for the trial of civil actions, but Power to summon witnesses and require production

(a) the rules of court or of law relating to the service of subpoenas upon and to the payment of conduct money or witness fees to witnesses do not apply;

(b) no person is entitled to claim any privilege in respect of any document, record or thing asked for, given or produced on the ground that he might be incriminated or exposed to a penalty or to civil litigation thereby;

(c) no person shall refuse to answer any question upon any ground of privilege, except that a solicitor shall not be required to disclose any communications between himself and his client; and

(d) no provision of *The Evidence Act* exempts any bank or any officer or employee thereof from the operations of this section. R.S.O. 1960, c. 125

(4) The person appointed to make any such investigation may seize and take possession of any documents, records, securities or other property of the person whose affairs are being investigated. Seizure of property

(5) Where any such investigation is ordered, the Superintendent may appoint an accountant or other expert to examine documents, records, properties and matters of the person whose affairs are being investigated. Accountant; other experts

(6) Every person appointed under subsection 1 or 5 shall report the result of his investigation or examination to the Superintendent. Report of investigation R.S.O. 1950, c. 332, s. 23.

Report to
Attorney
General

25. Where upon the report of an investigation made under section 24 it appears to the Superintendent that a person may have,

(a) contravened any of the provisions of this Act or the regulations; or

1953-54,
c. 51 (Can.)

(b) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to real estate,

the Superintendent shall send a full and complete report of the investigation, including the report made to him, any transcript of evidence and any material in the possession of the Superintendent relating thereto, to the Attorney General. R.S.O. 1950, c. 332, s. 24.

Investigation
under
order of
Attorney
General

26. Notwithstanding section 24, the Attorney General may by order appoint any person, including the Superintendent or the Registrar, to make an investigation into any matter relating to a trade in real estate, in which case the person so appointed has for the purposes of the investigation the same authority, powers, rights and privileges as a person appointed under section 24. R.S.O. 1950, c. 332, s. 25.

Evidence
not to be
disclosed

27. No person, other than the Superintendent, the Registrar, a person appointed by the Superintendent under section 24 or a person appointed by the Attorney General under section 26, shall, without the consent of one of them, disclose any information or evidence obtained or the name of any witness examined or sought to be examined under section 24 or 26. R.S.O. 1950, c. 332, s. 26.

Reporting to
Attorney
General,
publication
of report

28. Where an investigation has been made under section 24, the Superintendent may, and, where an investigation has been made under section 26, the person making the investigation shall, report the result thereof including the evidence, findings, comments and recommendations to the Attorney General, and the Attorney General may cause the report to be published in whole or in part in such manner as he deems proper. R.S.O. 1950, c. 332, s. 27.

Order to
hold or
refrain from
dealing with
funds

29.—(1) The Superintendent may,

(a) where he is about to investigate or during or after the investigation of a person under section 24 or 26; or

(b) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against a person

that in the opinion of the Superintendent are connected with or arise out of a trade in real estate or out of any business conducted by such person,

in writing or by telegram direct any person having on deposit or under control or for safe keeping any funds or securities of the person referred to in clause *a* or *b*, to hold such funds or securities or direct the person referred to in clause *a* or *b* to refrain from withdrawing any such funds or securities from any other person having any of them on deposit, under control or for safe keeping or to hold such funds or securities of clients or others in his possession or control in trust for an interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, or the *Winding-up Act* (Canada), or until the Superintendent in writing revokes such direction or consents to release any particular fund or security from the direction, but, in the case of a bank, loan or trust company, the direction only applies to the offices, branches or agencies thereof named in the direction.

R.S.C. 1952,
c. 14
R.S.O. 1960,
cc. 197, 71
R.S.C. 1952,
c. 296

(2) A person in receipt of a direction under subsection 1, if in doubt as to the application of the direction to any funds or security, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge of the Supreme Court who may direct the disposition of such funds or security and may make such order as to costs as seems just.

Application
for direction

(3) In any of the circumstances mentioned in clause *a* or *b* of subsection 1, the Superintendent may in writing or by telegram notify any registrar of deeds, master of titles or local master of titles that proceedings are being or are about to be taken that may affect land belonging to the person referred to in the notice, and the notice shall be registered against the lands mentioned therein and has the same effect as the registration of a certificate of *lis pendens* except that the Superintendent may in writing revoke or modify the notice. R.S.O. 1950, c. 332, s. 28, amended.

Notice to
registrars of
deeds or
masters of
titles

APPEALS

30. A notice of every direction, decision, order or ruling of the Superintendent granting or refusing to grant registration or renewing, refusing to renew, suspending, cancelling or changing the registration of a broker or salesman shall be served upon the applicant, broker or salesman whose registration is thereby affected at the address appearing in the application or upon the records of the Registrar. R.S.O. 1950, c. 332, s. 29.

Notice of
direction,
decision,
etc.

Review by
Superin-
tendent

31.—(1) An applicant, broker or salesman whose registration is affected by a direction, decision, order or ruling referred to in section 30 may, by notice in writing served upon the Registrar within thirty days after the mailing of the notice, request a hearing and review by the Superintendent of the direction, decision, order or ruling.

Notice of
hearing

(2) Where a hearing and review is requested under subsection 1, the Registrar shall send a notice in writing of the time and place thereof to the person requesting the hearing and review stating the date and place thereof.

Evidence

(3) Upon a review, the Superintendent may hear such evidence as is submitted to him by the person requesting the review or by any other person and which in the opinion of the Superintendent is relevant to the review but he is not bound by the technical rules of evidence and all oral evidence submitted shall be taken down in writing and such evidence together with such documentary evidence and things as are received in evidence by the Superintendent forms the record.

Power on
review

(4) Upon a review, the Superintendent may by order confirm or revoke the direction, decision, order or ruling under review or may make such alteration therein or addition thereto as he deems proper.

Notice

(5) Notice of the order made upon a review shall be sent forthwith to the person requesting the review. R.S.O. 1950, c. 332, s. 30.

Appeal to
Supreme
Court

32.—(1) Where the Superintendent has reviewed a direction, decision, order or ruling under section 31, the person who requested the review may appeal to a justice in appeal of the Supreme Court.

Form of
appeal

(2) Every appeal shall be by notice of motion served upon the Registrar within thirty days after the mailing of the notice under subsection 5 of section 31 and the practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court in an action, but the Rules Committee may vary or amend such practice and procedure or may prescribe the practice and procedure applicable to appeals under this Act.

Certificate
of Registrar

(3) The Registrar shall certify to the Registrar of the Supreme Court,

- (a) the direction, decision, order or ruling that has been reviewed by the Superintendent;
- (b) the order of the Superintendent upon the review, together with any statement of reasons therefor;

- (c) the record of the review; and
- (d) all written submissions to the Superintendent or other material that in the opinion of the Registrar are relevant to the appeal.

(4) The Attorney General may designate counsel to ^{Counsel} assist the court upon the hearing of an appeal under this section. R.S.O. 1950, c. 332, s. 31.

33. Where an appeal is taken under section 32, the court ^{Order of court} may by its order direct the Superintendent to make such direction, decision, order or ruling or to do such other act as the Superintendent is authorized and empowered to do under this Act or the regulations and as the court deems proper having regard to the material and submissions before it and to this Act and the regulations, and the Superintendent shall make such direction, decision, order or ruling or do such act accordingly. R.S.O. 1950, c. 332, s. 32.

34. An order of the court is final and there is no appeal ^{Further direction, etc.} therefrom, but, notwithstanding the order, the Superintendent has power to make any further direction, decision, order or ruling upon new material or where there is a material change in the circumstances, and every such direction, decision, order or ruling is subject to sections 30 to 33. R.S.O. 1950, c. 332, s. 33.

REGULATION OF TRADING

35.—(1) Every broker shall keep a sales record sheet in ^{Books, etc. to be kept} the prescribed form and proper books and accounts with respect to his trades and shall enter therein in the case of each trade,

- (a) the nature of the trade;
- (b) a description of the real estate involved sufficient to identify it;
- (c) the true consideration for the trade;
- (d) the names of all parties to the trade;
- (e) the amount of deposit received and a record of the disbursement thereof; and
- (f) the amount of his commission or other remuneration and the name of the party paying it.

(2) Every broker shall maintain a trust account for every ^{Trust ledger} person from whom trust moneys are received in which shall be entered full details of all trust moneys so received and disbursements therefrom. R.S.O. 1950, c. 332, s. 34.

Bank
account

36. Every broker shall maintain an account designated as a trust account in a chartered bank, loan or trust company or Province of Ontario Savings Office in which shall be deposited all moneys that come into his hands in trust for other persons in connection with his business, and he shall at all times keep such moneys separate and apart from moneys belonging to himself or to the partnership, in the case of a partnership, and shall disburse such moneys only in accordance with the terms of the trust. R.S.O. 1950, c. 332, s. 35; 1952, c. 90, s. 2.

Inspection
of books,
accounts,
etc.

37.—(1) The Registrar may at any time make an inspection of the books, documents and records of any broker.

Free
access
to books,
etc.

(2) Upon such an inspection, the Registrar is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of every description of the broker, and no person shall withhold or destroy, conceal or refuse to furnish any information or thing reasonably required by the Registrar for the purposes of the inspection. R.S.O. 1950, c. 332, s. 36.

Certificate
as to
financial
position

38. Every broker shall, when required by the Superintendent, file a certificate satisfactory to the Superintendent as to his financial position signed by an accountant approved by the Superintendent and by the broker or, in the case of a partnership, by all the members of the partnership. R.S.O. 1950, c. 332, s. 37.

Action for
commission
or
remuneration

39. No action shall be brought for commission or for remuneration for services in connection with a trade in real estate unless at the time of rendering the services the person bringing the action was registered or exempt from registration and the court may stay any such action at any time upon summary application R.S.O. 1950, c. 332, s. 38.

Idem

40. Subject to section 50, no action shall be brought to charge any person for the payment of a commission or other remuneration for the sale, purchase, exchange or leasing of real estate,

- (a) unless the agreement upon which the action is brought is in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized; or
- (b) unless the broker or his salesman has obtained an offer in writing that is accepted; or
- (c) unless the broker having been authorized in writing to list the property,

- (i) shows the property to the purchaser, or
- (ii) introduces the purchaser to the vendor for the purpose of discussing the proposed sale, purchase, exchange or leasing. R.S.O. 1950, c. 332, s. 39; 1957, c. 106, s. 4.

41. No broker or salesman shall, as an inducement to purchase, sell or exchange real estate, make any representation or promise that he or any other person will,

Promises to re-sell, etc., prohibited

- (a) re-sell or in any way guarantee or promise to re-sell any real estate offered for sale by him;
- (b) purchase or sell any of the purchaser's real estate;
- (c) procure a mortgage, extension of a mortgage, lease or extension of a lease; or
- (d) purchase or sell a mortgage or procure a loan,

unless at the time of making the representation or promise the broker or salesman making it delivers to the person to whom the representation or promise is made a statement signed by the broker or salesman clearly setting forth all the details of the representation or promise made. 1957, c. 106, s. 5.

42. A broker carrying on business alone and not through an incorporated company shall carry on business in his own name only and shall not use any description, words or device that would indicate that his business is being carried on by more than one person or by a company, but a surviving or remaining partner may carry on business in the name of the original partnership in which case he shall publish on all letter-heads and circulars used by him in connection with his business the fact that he is the sole proprietor thereof. R.S.O. 1950, c. 332, s. 41.

Carrying on business as individual

43. No broker or salesman shall trade in real estate until notified in writing by the Registrar that he is registered. R.S.O. 1950, c. 332, s. 42.

Broker not to trade until notified of registration

44. A person who is not registered as a broker shall neither directly nor indirectly hold himself out as being a broker and a person who is not registered as a salesman shall neither directly nor indirectly hold himself out as being a salesman. 1954, c. 82, s. 4.

Unregistered broker and salesman

45. Every partnership and incorporated company registered as a broker shall publish the names of every person having an interest either directly or indirectly to the extent of not less than 10 per cent in the capital of the partnership or

Names of officers

company, as the case may be, on all letterheads and circulars in which the name of the partnership or company appears. R.S.O. 1950, c. 332, s. 44.

Advertising

46. Every broker shall, when advertising to purchase, sell, exchange or lease real estate, clearly indicate his own name as being the party advertising and that he is a broker, and any reference to the name of a salesman in the advertisement shall clearly indicate the broker as being the employer of the salesman. R.S.O. 1950, c. 332, s. 45.

Employment of unregistered person or salesman of other broker

47. No broker shall employ, permit or engage the salesman of another broker or an unregistered person to trade in real estate nor shall a broker pay commission or other remuneration to such a salesman or person. R.S.O. 1950, c. 332, s. 46.

Salesmen trading for other brokers

48. No salesman shall trade in real estate on behalf of any broker other than the broker who, according to the records of the Superintendent, is his employer, and no salesman is entitled to or shall accept any commission or other remuneration for trading in real estate from any person except the broker who is registered as his employer. R.S.O. 1950, c. 332, s. 47.

Purchase of listed real estate by broker or salesman

49. No broker or salesman shall purchase for himself or make an offer to purchase for himself either directly or indirectly real estate listed with him for sale, nor shall he acquire any interest therein, either directly or indirectly, until he has clearly disclosed to the listing owner complete details of his negotiations for the sale of the real estate to any other person. R.S.O. 1950, c. 332, s. 48.

Breaking of contract prohibited

50.—(1) No broker or salesman shall induce any party to a contract for sale or rental of real estate to break the contract for the purpose of entering into another such contract.

Commission

(2) Unless agreed to in writing by the vendor, no broker is entitled to claim commission from him in respect of a trade in real estate if the real estate is to the knowledge of the broker covered by an unexpired exclusive listing agreement with another broker. 1957, c. 106, s. 6.

Statements to be delivered in purchase of business

51.—(1) Where a trade in a business is negotiated by a broker or his salesman, the broker or his salesman, as the case may be, shall before a binding agreement of purchase and sale is signed by the parties deliver to the person acquiring the business,

(a) a profit and loss statement or statement showing the revenue and disbursements of the business during the

preceding twelve months or since the acquisition of the business by the person disposing of it; and

- (b) a statement of the assets and liabilities of the business; and
- (c) a statement containing a list of all fixtures, goods, chattels, rights and other assets relating to or connected with the business that are not included in the transaction,

and every such statement shall be signed by the person disposing of the business or his agent lawfully authorized in that behalf. R.S.O. 1950, c. 332, s. 50 (1); 1957, c. 106, s. 7 (1).

(2) Where the broker or salesman, as the case may be, ^{Waiver} delivers to the person acquiring the business a statement under oath of the person disposing of the business setting forth,

- (a) the terms and conditions under which the person disposing of the business holds possession of the premises in which the business is being carried on; and
- (b) the terms and conditions under which the person disposing of the business has sublet a part of the premises in which the business is being carried on; and
- (c) all liabilities of the business; and
- (d) that the person disposing of the business has made available such books of account of the business as he possesses for inspection by the person acquiring the business, or that the person disposing of the business has no books of account of the business, as the case may be,

the person acquiring the business may waive compliance with clauses *a* and *b* of subsection 1 by signing and delivering to the broker or salesman, as the case may be, a statement that he has received and read the statement under oath of the person disposing of the business. R.S.O. 1950, c. 332, s. 50 (2); 1957, c. 106, s. 7 (2).

(3) Unless the statement mentioned in clause *c* of subsection 1 is delivered in accordance with subsection 1, all fixtures, goods, chattels and rights and other assets relating to or connected with the business shall be deemed to be included in the transaction. ^{What to be deemed included in transaction} R.S.O. 1950, c. 332, s. 50 (3).

52.—(1) No broker or salesman shall request or enter into ^{Type of commission prohibited} an arrangement for the payment to him of commission or other remuneration based on the difference between the price at

which real estate is listed for sale and the actual sale price thereof, nor is a broker or salesman entitled to retain any commission or other remuneration computed upon any such basis.

Commission and remuneration, scale

(2) All commission or other remuneration payable to a broker in respect of a trade in real estate shall be upon an agreed amount or percentage of the sale price or rental, as the case may be, and, where no agreement as to the amount of the commission has been entered into, the rate of commission or other basis or amount of remuneration shall be that generally prevailing in the community where the real estate is situate. R.S.O. 1950, c. 332, s. 51.

Agreement to list real estate with broker

53.—(1) Every broker and salesman shall, immediately after the execution of an agreement to list real estate for sale, exchange, lease or rent with the broker, deliver to the person who has signed the agreement a true copy thereof. R.S.O. 1950, c. 332, s. 52 (1); 1957, c. 106, s. 8 (1).

Expiry of agreement

(2) An agreement with a broker to list real estate for sale, exchange, lease or rental is not valid,

- (a) if it does not contain a provision that it will expire on a certain date specified therein;
- (b) if it contains a provision for more than one date on which it may expire; or
- (c) if a true copy of it is not delivered by the broker or his salesman to the other party immediately after its execution. 1957, c. 106, s. 8 (2).

Agreements to sell, purchase, etc.

54. Where a broker or salesman has secured an acceptance of an offer to sell, purchase, exchange, lease or rent real estate, he shall require each of the parties to sign a sufficient number of copies of the agreement and he shall retain one signed copy and shall forthwith deliver one signed copy to each of the parties. R.S.O. 1950, c. 332, s. 53.

OFFENCES

Penalties

55. Every person who contravenes any of the provisions of this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000 for a first offence and not more than \$2,000 for a subsequent offence and, in case of either a first or a subsequent offence, either in default of payment of any fine imposed or in addition to such fine, to imprisonment for a term of not more than six months. R.S.O. 1950, c. 332, s. 54.

56.—(1) No proceedings to recover the fines provided in ^{Proceedings to recover fines} section 55 shall be instituted except with the written consent of the Attorney General.

(2) No proceedings to recover the fines provided by section ^{Idem} 55 shall be instituted except within two years after the alleged offence was committed. R.S.O. 1950, c. 332, s. 55.

GENERAL

57. Except with the consent of the Attorney General, no ^{No action without consent} action whatever and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy lie or shall be instituted against a person, whether in his public or private capacity, in respect of an act or omission in connection with the administration or carrying out of this Act or the regulations where such person is the Superintendent or his representative, or the Registrar, or where such person was proceeding under the written or verbal direction or consent of any one of them or under an order of the Attorney General made under this Act. R.S.O. 1950, c. 332, s. 56.

58. The Lieutenant Governor in Council may make regu- ^{Regulations} lations,

- (a) prescribing any class of trades in real estate or of real estate brokers or salesmen that shall be exempt from all or any of the provisions of this Act;
- (b) prescribing the amount and form of bonds to be furnished under this Act;
- (c) prescribing the classes of negotiable securities that may be accepted as collateral security for a bond;
- (d) prescribing the fees payable upon applications for registration and renewal of registration and any other fees in connection with the administration of this Act and the regulations;
- (e) prescribing the practice and procedure upon investigations under sections 24 and 26;
- (f) prescribing forms and providing for their use;
- (g) providing for the examination of applicants for registration and renewal of registration;
- (h) prescribing the form and contents of the list of persons registered under this Act that is to be prepared by the Registrar and the date of publication thereof and governing its distribution;

- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1950, c. 332, s. 57.

Certificate
as evidence

59. A statement as to the registration or non-registration of a person under this Act purporting to be certified by the Superintendent or Registrar, without proof of the office or signature of the person certifying, is receivable in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution. R.S.O. 1950, c. 332, s. 58.

List of
registered
persons
to be
published

60. The Registrar may, from time to time, prepare, publish and distribute a list of all persons registered under this Act. R.S.O. 1950, c. 332, s. 59; 1957, c. 106, s. 9.
